



State of Tennessee

TWENTIETH JUDICIAL DISTRICT

RANDY KENNEDY, JUDGE
SEVENTH CIRCUIT COURT
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February 22, 2013

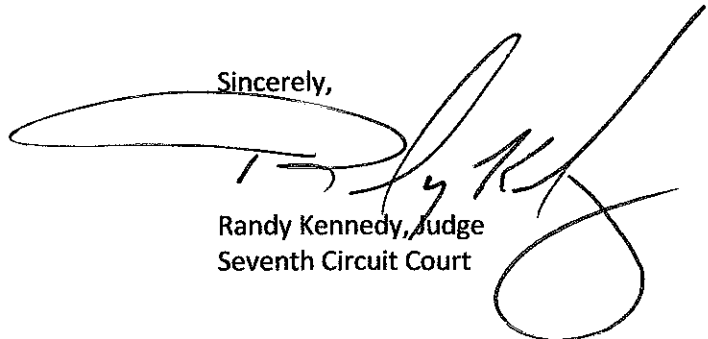
Dear Council Member:

Despite the many other challenges which you address on behalf of our City, I understand you have recently been informed of allegations surrounding the Public Guardian who serves the citizens of this County and this Court in Conservatorship and Guardianship cases. As you know when there is no willing, competent or qualified family member available for appointment; the office of Public Guardian is a valuable tool. This service has been provided for hundreds of vulnerable and disabled adults, as well as minor children for many years.

While the Council does not provide funding for this position, we are thankful that you have approved the payment of bond premiums which provide insurance regarding the performance of public fiduciaries. It is my responsibility to insure that the Public Guardian, who I nominate and who the Council appoints, is providing effective and quality representation for these individuals, and that the Public Guardian's compensation is set in amounts that are consistent and in conformity with the law.

It is in the best interest of incapacitated adults served by this Court, for specific actions, described in the attached document to be implemented. As always, my primary goal is to provide fair and impartial justice to all citizens who may be affected by our Court proceedings. I know you are equally concerned that Nashville continues to be a community in which the Courts are transparent and accessible. To that end, if I can be of additional assistance please advise me accordingly. Otherwise, I remain

Sincerely,



Randy Kennedy, Judge
Seventh Circuit Court

RK/kl

Enclosure

p.s. The original of this letter will be mailed to your home

CONSERVATORSHIPS

It is my honor to serve as Judge of the Seventh Circuit Court for Metropolitan Nashville. From 2003 to present, I have tried more than **2,100 conservatorship and adult guardianship cases**, more than any other judge in Tennessee. At the same time, Seventh Circuit Court has successfully presided over the administration of thousands of decedent's estates for families of citizens who died in Nashville. I'm pleased to report that we have achieved the best outcome possible for the overwhelming majority of these persons whose lives are adversely impacted by serious and incapacitating illness, or debilitating injury. The appointment of a Conservator is only part of the story. In addition, we presently manage 1,910 active conservatorship cases, some of which date back for more than ten years.

Many families are unified in their efforts to select the best qualified member of the family to serve as a conservator. In these circumstances, costs and fees are normally kept to a minimum.

Causes for bringing a conservatorship proceeding are many and varied. Conditions leading to these cases may range from severe physical diseases or injuries, mental illnesses and addictions, traumatic brain injury, dementia, Alzheimer's Disease, psychosis, severe stroke, disabling heart attacks, and a multitude of other conditions too numerous to mention.

Contested conservatorship cases are both emotionally explosive and highly expensive. They involve the most fragile and vulnerable adults in our society. From the wealthiest citizens to the most impoverished among us, every year a great many Nashvillians are determined to be unable to care for themselves. Some of these cases are filed by family members. Some conservatorships are initiated by Adult Protective Services, by local hospitals, or friends or neighbors, as the result of the failure of family members to step forward. Sadly, many also come about because of neglect or abuse by the very relatives who claim to be qualified to care for the disabled individual.

In every case, we endeavor to weigh all available evidence and apply the law in such a manner that the case results in protecting and securing the rights of the disabled person. Where appropriate, the property and assets of the incapacitated individual may also be in jeopardy, and a Conservator may be appointed with respect to the management of the disabled adult's assets and income. We strive to select the most qualified individual to serve as conservator.

I am humbled by the impassioned and committed service of the hundreds of family members appointed to serve without any compensation. I am also proud of the service of those professionals who are occasionally called upon to serve, when family members are no longer available or qualified to serve. These professional appointees include: Greater Nashville Regional Council on Aging (GNRC), Fifty Forward, Inc. (formerly Senior Citizens), Guardianship and Trust Corporation (GTC), ComCare, former Public Guardian (Monica Edwards) and numerous other attorneys.

Without fail, professional guardians and paid conservators are far more expensive than family members, and are only selected as a last resort. Their services are critical and invaluable.

Our primary goal is to appoint a competent family member whenever possible. However, when there is no family available, the Seventh Circuit Court appoints professionals to serve as fiduciaries. We encourage fiduciaries to delegate functions and/or to employ the least expensive alternative service provider as long as doing so does not diminish the quality of care provided to the conservatee and provided the function can be performed by a non-professional employee, independent contractor, or service vendor.

I am pleased to state that none of the individuals or organizations above has ever been found to have committed any act of neglect, abuse, or any malfeasance in their service to any disabled individuals; nor has any of them been adjudicated by any Court as having engaged in any act of wrongdoing, including the current Public Guardian, Ms. Jeanan Stuart.

However, a recent inquiry regarding fees and compensation paid to the Public Guardian raises serious issues. Ms. Stuart serves as Conservator in approximately **90 cases**, representing **less than 5%** of our pending conservatorship cases. Like all public fiduciaries, Ms. Stuart is not a Metro employee. Ms. Stuart was appointed in 2008 and is generally compensated through the assets of those conservatees, for whom she has been appointed, all subject to Court approval.

To the extent she has been compensated in amounts now deemed excessive, the ultimate responsibilities for approval of her fees rests with me, pursuant to TCA 34-1-112. In other words, **"THE BUCK STOPS HERE"**!

I have the duty to review, evaluate and either approve, reduce or reject all Motions for Fees filed by fiduciaries and attorneys. To the extent that my oversight of the Public Guardian is wanting, I am genuinely sorry. To the extent there has been any overpayment to her, it is my responsibility. All lawyers who practice in Seventh Circuit Court and fiduciaries who seek compensation are required to present itemized time records, sworn affidavits detailing their time and hourly rate, a description of their duties and the dates when these functions were performed, pursuant to our published Local Rules of Court for the 20th Judicial District, pursuant to Supreme Court Rule 8, RPC 1.5, and current statutes and case law. Based on the foregoing information, if I determine that the fees are necessary and reasonable, then I may approve the fees. The use of this standard is consistent with other trial courts throughout Tennessee.

Nevertheless, as Judge of the Seventh Circuit Court, I am taking the following steps:

1. The Court **will conduct a more thorough review all of the Public Guardian's pending cases** to determine whether or not there appears to be any inappropriate billing practices that have occurred, or are occurring.
2. The Court **will refrain from appointing the Public Guardian to any new cases** pending the outcome of its case review. The Court will continue to appoint all other qualified professionals whenever appropriate.
3. The Court **will require the Public Guardian to prepare an interim status report** on all pending cases, for filing with the Court.
4. While the Court is prohibited from engaging in Ex Parte communications regarding any pending case, I **will continue to work with the members of the Metro Council** whose job it is to appoint public fiduciaries, to whatever extent is deemed necessary, to insure that the most qualified professionals are nominated by the Court and approved by Council consistent with the statute and in the best interest of our citizens.
5. **Establish a Volunteer Task Force (VTF)** of local attorneys, and other citizens, whose task it will be to recommend specific guidelines, not inconsistent with state law, regarding fees and compensation charges by lawyers performing non-legal work for the benefit of conservatees, and fees and compensation through delegation of authority to paralegals, legal assistants, social workers, and independent vendors. I will ask the VTF to also compile a list of established agencies willing to provide specific types of services to conservatees without charge.



RANDY KENNEDY, JUDGE
SEVENTH CIRCUIT COURT